

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ERIE COUNTY ENVIRONMENTAL  
COALITION, PENNENVIRONMENT,  
INC. and THE GAIA DEFENSE LEAGUE,  
Plaintiffs

v.

MILLCREEK TOWNSHIP SEWER  
AUTHORITY AND MILLCREEK  
TOWNSHIP,  
Defendants

CIVIL ACTION NO. 05-59 ERIE  
ELECTRONICALLY FILED

JUDGE COHILL

AFFIDAVIT OF RICARDO F. GILSON

COMMONWEALTH OF PENNSYLVANIA )  
COUNTY OF CRAWFORD ) ss:

I, RICARDO F. GILSON, first being duly sworn on oath and under penalty of perjury,  
hereby states as follows:

1. I am the Program Manager for the Water Quality Section of the Northwest Regional Office of the Pennsylvania Department of Environmental Protection ("Department").
2. As Program Manager, I am responsible for all aspects of the Department's Water Quality Program, ranging from approving NPDES permits and sewer construction permits to enforcement and approving Consent Orders and Agreements in the Department's Northwest Region.

3. Millcreek Township is located in the Department's Northwest Region and falls under the scope of my responsibilities.

4. Pursuant to an agreement between the Department and the Erie County Department of Health ("ECDH"), the ECDH acts as the agent of the Department of Erie County for, among other things, inspections and some permitting reviews.

5. On October 31, 2003, I executed, on behalf of the Department, a Consent Order and Agreement between the Department and the Millcreek Township Sewer Authority ("MTSA") and Millcreek Township ("2003 COA").

6. A true and correct copy of the 2003 COA is included in the Appendix to the Motion for Summary Judgment at App. 162 - 184.

7. To date, MTSA and Millcreek have met all of the deadlines imposed by the 2003 COA for the work that is to be performed under the 2003 COA and have paid all of the civil penalties and stipulated civil penalties imposed under the 2003 COA.

8. On June 29, 2004, MTSA and Millcreek submitted to the Department the Special Study required by the 2003 COA.

9. In the Department's internal review memo on the Special Study, the Department concluded that the Special Study was consistent with the requirements of Pennsylvania law and approval was recommended.

10. A true and correct copy of the Department's internal review memo on the Special Study is included in the Appendix to the Motion for Summary Judgment at App. 414 - 417.

11. On September 30, 2004, the Department approved the Special Study submitted by MTSA and Millcreek.

12. A true and correct copy of the Department's letter approving the Special Study is included in the Appendix to Motion for Summary Judgment at App. 418 - 419.

13. On June 28, 2005, MTSA and Millcreek submitted to the Department the Special Study Addendum due to a significant storm event that occurred after the Special Study was submitted.

14. In the Department's internal review memo on the Special Study Addendum, the Department concluded that the Addendum was consistent with the requirements of Pennsylvania law and approval was recommended.

15. A true and correct copy of the Department's internal review memo on the Special Study Addendum is included in the Appendix to Motion for Summary Judgment at App. 601 - 602.

16. The Department approved the Special Study Addendum on July 12, 2005.

17. A true and correct copy of the Department's letter approving the Special Study Addendum is included in the Appendix to Motion for Summary Judgment at App. 600.

18. Each of the Department's approvals of the Special Study and the Special Study Addendum was publicly noticed in Pennsylvania Bulletin notices on November 6, 2004 and July 30, 2005. No action was taken by any member of the public in response to these notices, including any of the Plaintiffs.

19. A true and correct copy of the Pennsylvania Bulletin notices dated November 6, 2004 and July 30, 2005 regarding the Department's approvals of the Special Study and Special Study Addendum are included in the Appendix to Motion for Summary Judgment at App. 692 - 693.

20. On June 29, 2005, MTSA and Millcreek submitted the Permit Application for the construction of the Kearsarge pump station upgrades and the overflow retention facility.

21. On August 6, 2005, notice of this Permit Application appeared in the Pennsylvania Bulletin.

22. A true and correct copy of the August 6, 2005 Pennsylvania Bulletin notice is included in the Appendix to Motion for Summary Judgment at App. 734.

23. No one from the public, including anyone from the Plaintiffs, submitted any comments on the Application.

24. In the Department's internal review and recommendation document, the Department recommended approval of the permit and stated, "The proposed work will provide flow equalization during heavy storm water events, eliminate an overflow and reduce the potential of sewage contamination of Walnut Creek.

25. A true and correct copy of the Department's internal review and recommendation document is included in the Appendix to Motion for Summary Judgment at App. 609 - 611.

26. The Department issued the construction permit for the Kearsarge pump station upgrades and overflow retention facility on September 26, 2005.

27. A true and correct copy of the Department's construction permit for the Kearsarge pump station upgrades and overflow retention facility is included in the Appendix to Motion for Summary Judgment at 604 - 608.

28. On October 8, 2005, notice of the Department's issuance of the construction permit appeared in the Pennsylvania Bulletin.

29. A true and correct copy of the October 8, 2005 Pennsylvania Bulletin notice is included in the Appendix to Motion for Summary Judgment at App. 735.

30. No one appealed the issuance of the September 26, 2005 construction permit.

31. On December 28, 2005, MTSA and Millcreek submitted an Application to amend the construction permit issued on September 29, 2005 to change the overflow retention facility configuration from one tank to two tanks. On January 14, 2006, MTSA and Millcreek submitted an update to its Act 537 Plan to cover the new two-tank design.

32. On March 1, 2006, the Department approved the changes proposed by MTSA and Millcreek and issued an amended construction permit.

33. A true and correct copy of the Department's letter approving the change from one tank to two tanks is included in the Appendix to Motion for Summary Judgment at App. 614.

34. A true and correct copy of the March 1, 2006 amended construction permit is included in the Appendix to Motion for Summary Judgment at App. 615 - 619.

35. MTSA and Millcreek have received all the necessary approvals from the Department to construct the storage tanks and accompanying improvements to the Kearsarge pump station, which are designed to remove the Kearsarge overflow and eliminate the overflow events tributary to the Kearsarge pump station.

36. On January 17, 2006, the Department issued to MTSA and Millcreek the permit to construct the Peach Street diversion.

37. A true and correct copy of the Peach Street diversion construction permit is included in the Appendix to Motion for Summary Judgment at App. 420 - 424.

Ricardo F. Gilson

Ricardo F. Gilson

Sworn to and subscribed before me

this 28<sup>th</sup> day of March, 2006.

Yvonne E. Fleet  
Notary Public

**NOTARIAL SEAL**  
Yvonne E. Fleet, Notary Public  
Crawford County, Pennsylvania  
My Commission Expires April 23, 2006